

REMARKS

The Applicants wish to express their gratitude for the courtesies extended by the Examiner in the Interview on March 15, 2004. The foregoing amendments and following remarks distinguishing the foregoing claims over the cited references are consistent with the discussions in the Interview.

The Claims Are Patentable Over Muller and Nawata Under § 103(a).

The Applicants respectfully traverse the pending rejection of claims 1-11 and 13-16 as unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 5,896,781 to Muller ("Muller") in view of European patent document EP 0 788 931 A2 ("Nawata"), and the rejection of claim 12 as unpatentable over these references in further view of German patent document DE 340 16 54 ("Lamgeschei"). on the grounds that the present invention is not taught or suggested by any combination of these references.

Claim 1 recites, *inter alia*, a pedal pivot shaft mounted in a bracket support in a guide extending approximately horizontally, wherein the pedal pivot shaft in normal operation being *fixed in a forward position* of the guide *via a fixing*, and the fixing being neutralized in the event of a head-on collision. For clarity, as discussed in the March 15, 2004 Interview the Applicants have amended the independent claims to recite that the fixing *directly* fixes the pedal pivot shaft in the forward position, and that "neutralizing" refers to defeating the fixing in order to permit the pivot shaft to be released from its forward position: "the fixing being neutralized and thereby releasing the pedal pivot shaft to move from the forward position in the event of a head-on collision."

The current rejection over Muller and Nawata maintains that Muller discloses a pedal pivot shaft 4 “fixed via a fixing (7),” and that this “fixing” is neutralized in a collision. January 23, 2004 Office Action at 2. The Applicants respectfully submit that Muller does not teach a pedal shaft fixed by a fixing, or the neutralization of this alleged fixing in a collision.

First, the Muller pedal pivot shaft 4 is not “fixed” or otherwise held in position by “fixing 7.” The part characterized as “fixing 7” is actually a rigid “transverse frame member 7,” *i.e.*, a structural beam to which the pedal assembly (*i.e.*, support structure 3) is bolted. Muller at 2:31-34. This transverse frame member 7 has no contact whatsoever with pedal pivot shaft 4 during normal operation, and thus cannot exert any form of restraint on pedal pivot shaft 4. *Id.* at 2:14-20 (pedal pivot shaft 4 held in place entirely by the pedal assembly’s mounting bracket, “support structure” 3). Transverse frame member 7 thus does not “fix” shaft 4 in any manner. Muller therefore does not disclose or suggest claim 1’s “pedal pivot shaft in normal operation being fixed in a forward position of the guide ~~via~~ directly by a fixing.”

As to transverse frame member 7 allegedly being neutralized, *i.e.*, being rendered incapable of “fixing” pedal pivot shaft 4 in some position, during a collision is the first time transverse frame member 7 can even arguably be said to affect pedal pivot shaft 4, *and it does so by actively applying a force to the shaft* 4. In a collision, when the top of the pedal reaches frame member 7, the rigid frame member stops the pedal’s rotation, which in turn allows the force of the collision to break off shaft 4. *Id.* at 2:56-3:4 (frame member 7 stops pedal top

extension 6 and thus causing shaft 4 to shear off the pedal assembly).¹ In other words, rather than frame member 7 in some way being “neutralized,” Muller teaches that frame member 7 must *not* be neutralized if the pivot shaft it to be fractured. Muller thus does not disclose or suggest claim 1’s limitation of “the fixing being neutralized and thereby releasing the pedal pivot shaft to move from the forward position in the event of a head-on collision.”

For its part, Nawata does not cure the deficiencies of Muller. Nawata is cited as teaching a horizontal support guide and a pedal pivot shaft “fixed” in a forward position in normal operation. As discussed in the Applicants’ October 17, 2003 Response, Nawata fails to teach or suggest a fixing (such as that missing from Muller) which fixes the pedal pivot shaft in a forward position and which is neutralized in a collision. Thus, there is nothing in either Muller or Nawata which suggests their combination to obtain a “pedal pivot shaft in normal operation being fixed in a forward position of the guide via directly by a fixing, ... and the fixing being neutralized and thereby releasing the pedal pivot shaft to move from the forward position in the event of a head-on collision.”

Finally, the Applicants submit that there is no suggestion or motivation to combine these references, as their combination would not result in the claimed invention, and would change a principle of operation of one or both of the references. If Muller was modified to incorporate Nawata’s horizontal slots as

¹ Muller’s use of a breakaway pedal pivot shaft (rather than neutralizing fixings) also teaches away from the present invention’s use of fixings that can be defeated and sacrificed in order to preserve pedal operability following a collision. Muller at 2:67-3:9 (“[A]s a result of gravity, [the pedals] fall down to the floor of the vehicle.”).

suggested in the pending Office Action, rather than pivoting the pedal away from the driver's feet in an collision, the pedal would be pivoted *toward* the driver, increasing the risk of injury. This is because during a collision, the top 6 of the Muller pedal would become an essentially fixed pivot point against rigid transverse frame member 7, and Muller's pivot shaft would slide to the rear in its Nawata slot, thereby causing the pedal to pivot toward the driver. Thus, even if the cited references were combined, the present invention would not result.

As to impermissible change of operating principle, Muller discloses a pedal arrangement in which the pedal is pushed *toward* a driver's feet in a collision by pushrod 14, until the pedal pivot shaft 4 *shears off* and the pedal falls to the vehicle floor. Nawata teaches a pedal arrangement in which the pedal is drawn *away* from the driver's feet by rigid brackets 70 as the assembly is deformed in a collision. Thus, where Muller teaches shearing of the pivot shaft to protect the driver, Nawata requires just the *opposite* – that the shaft remain intact in order to protect the driver's feet. Because these references teach mutually-incompatible approaches to pedal motion control, no workable combination of these references can result that does not require the principle of operation of one or the other reference to be changed. The Applicants respectfully submit that submit that there can be no suggestion or motivation for such an impermissible change. *Accord*, MPEP §2143.01.

In view of the foregoing remarks, the Applicants respectfully submit that Muller and Nawata, either alone or in combination, fail to teach or suggest the invention recited in claim 1 under § 103(a). Further, because claim 12 depends

from allowable claim 1 and is patentably distinguishable over the cited references, claim 12 is also allowable. Accordingly, reconsideration and withdrawal of the pending § 103(a) rejections is respectfully requested.

CONCLUSION


In view of the foregoing amendments, the Applicant respectfully submits that claims 1-16 are now in allowable form. Early and favorable consideration and issuance of a Notice of Allowance for these claims is respectfully requested.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #225/49902US).

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Respectfully submitted,



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